

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2313

Introduced by Assembly Member Buchanan

February 19, 2010

An act to add Section ~~21082.3~~ *21083.03* to the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2313, as amended, Buchanan. Greenhouse gas: emissions: significant effects.

The California Global Warming Solutions Act of 2006 requires the State Air Resources Board (state board) to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to the statewide GHG emissions levels in 1990 to be achieved by 2020.

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

~~This bill would require a lead agency, in determining whether a project may have a significant effect on the environment, relating to the GHG emissions associated with the project, to apply specified criteria. By~~

~~requiring a local lead agency to apply those criteria, the bill would impose a state-mandated local program.~~

~~The bill would provide that it is intended to specify standards for determining the significance of a project's environmental effects relating to GHG emissions under CEQA, and that it does not limit the application to proposed projects of any other applicable laws, rules, or regulations, relating to GHG emissions or emissions reductions.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

CEQA requires the Office of Planning and Research, by July 1, 2009, to prepare, develop, and transmit to the Natural Resources Agency guidelines for the mitigation of GHG emissions or the effects of GHG emissions as required by CEQA. The Natural Resources Agency is required to certify and adopt those guidelines on or before January 1, 2010. CEQA requires the office and the agency to periodically update those guidelines to incorporate specified new information or criteria.

This bill would require the office, on or after January 1, 2011, at the time of the next review of the guidelines prepared and developed by the office to implement CEQA, to prepare, develop, and transmit to the Secretary of the Natural Resources Agency recommended proposed changes or amendments to the guidelines regarding standards for determining significant effects on the environment resulting from GHG emissions. The bill would require the secretary to adopt those recommended proposed changes or amendments to the guidelines, upon receipt and review.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature intends to enact legislation*
- 2 *regarding the determination of significant effects on the*
- 3 *environment resulting from greenhouse gas emissions.*
- 4 *SEC. 2. Section 21083.03 is added to the Public Resources*
- 5 *Code, to read:*
- 6 *21083.03. (a) On or after January 1, 2011, at the time of the*
- 7 *next review, pursuant to subdivision (f) of Section 21083, of the*

1 *guidelines prepared and developed pursuant to Section 21083 to*
2 *implement this division, the Office of Planning and Research shall*
3 *prepare, develop, and transmit to the Secretary of the Natural*
4 *Resources Agency recommended proposed changes or amendments*
5 *to the guidelines implementing this division regarding standards*
6 *for determining significant effects on the environment resulting*
7 *from greenhouse gas emissions.*

8 *(b) Upon receipt and review, the Secretary of the Natural*
9 *Resources Agency shall certify and adopt the recommended*
10 *proposed changes or amendments prepared and developed by the*
11 *Office of Planning and Research pursuant to subdivision (a).*

12 ~~SECTION 1. The Legislature finds and declares all of the~~
13 ~~following:~~

14 ~~(a) In 2006, the Legislature passed, and the Governor signed,~~
15 ~~Assembly Bill 32 (AB 32) (Chapter 488 of the Statutes of 2006),~~
16 ~~which requires the state to reduce its greenhouse gas emissions to~~
17 ~~1990 levels by 2020. According to the State Air Resources Board~~
18 ~~(ARB), this will require the state to reduce its greenhouse gas~~
19 ~~emissions by approximately 30 percent.~~

20 ~~(b) In Massachusetts v. E.P.A. (2007) 549 U.S. 497, the United~~
21 ~~States Supreme Court found that greenhouse gases are air pollutants~~
22 ~~under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) that~~
23 ~~have effects on the health and welfare of the public.~~

24 ~~(c) The California Environmental Quality Act (CEQA) (Division~~
25 ~~13 (commencing with Section 21000) of the Public Resources~~
26 ~~Code) requires public agencies to review the potentially significant~~
27 ~~environmental effects of proposed projects, including the effects~~
28 ~~of greenhouse gas emissions, and, if those effects may be~~
29 ~~significant, to consider feasible alternatives or mitigation measures~~
30 ~~that would substantially reduce significant adverse environmental~~
31 ~~effects.~~

32 ~~(d) In 2007, the Legislature passed, and the Governor signed,~~
33 ~~Senate Bill 97 (Chapter 185 of the Statutes of 2007), which directed~~
34 ~~the Office of Planning and Research to submit to the Natural~~
35 ~~Resources Agency guidelines for the analysis and mitigation of~~
36 ~~greenhouse gas emissions pursuant to CEQA. In 2009, the Natural~~
37 ~~Resources Agency adopted amendments to the CEQA guidelines~~
38 ~~for the analysis and mitigation of greenhouse gas emissions that~~
39 ~~did not include a threshold of significance for greenhouse gas~~
40 ~~emissions.~~

1 ~~(e) The absence of a statewide framework for determining~~
2 ~~thresholds of significance for greenhouse gas emissions has led to~~
3 ~~uncertainty as to the appropriate significance thresholds for~~
4 ~~greenhouse gas emissions for projects being evaluated under~~
5 ~~CEQA. This uncertainty leads to confusion and compromises the~~
6 ~~state's efforts to achieve the goals of AB 32 and to restore and~~
7 ~~maintain a sound and vibrant economy.~~

8 ~~(f) To achieve the goals of AB 32, California should enact a~~
9 ~~uniform approach determining thresholds of significance for~~
10 ~~greenhouse gas emissions under CEQA, consistent with AB 32~~
11 ~~requirements for the state to reduce its greenhouse gas emissions~~
12 ~~by 30 percent by 2020.~~

13 ~~(g) The adoption of a statewide framework for determining~~
14 ~~thresholds of significance for greenhouse gas emissions should be~~
15 ~~updated regularly as ARB moves forward with the implementation~~
16 ~~of AB 32.~~

17 ~~SEC. 2. Section 21082.3 is added to the Public Resources Code,~~
18 ~~to read:~~

19 ~~21082.3.—(a) In determining whether a project may have a~~
20 ~~significant effect on the environment relating to the greenhouse~~
21 ~~gas emissions associated with that project, the lead agency shall~~
22 ~~apply the following criteria:~~

23 ~~(1) A project that is exempt from this division pursuant to any~~
24 ~~statute or any guidelines adopted pursuant to Section 21084 shall~~
25 ~~be exempt from this division notwithstanding any greenhouse gas~~
26 ~~emissions associated with the project, and no analysis of the~~
27 ~~project's greenhouse gas emissions is required.~~

28 ~~(2) A project that is not covered by paragraph (1), but that~~
29 ~~complies with applicable provisions of a local, regional, or~~
30 ~~statewide greenhouse gas emissions reduction plan or all applicable~~
31 ~~regulations issued thereunder shall be deemed to have a less than~~
32 ~~significant effect on the environment relating to greenhouse gas~~
33 ~~emissions for purposes of this division. In order to qualify under~~
34 ~~this paragraph, the plan or applicable regulations shall be specified~~
35 ~~in law or have been adopted by a public agency in compliance~~
36 ~~with this division. The negative declaration, mitigated negative~~
37 ~~declaration, environmental impact report, or other environmental~~
38 ~~document approved for a project covered by this paragraph shall~~
39 ~~include a brief statement explaining the project's compliance with~~
40 ~~the plan or applicable regulations, but is not required to quantify~~

1 ~~project-specific greenhouse gas emissions unless that quantification~~
2 ~~is necessary to demonstrate compliance with the identified plan~~
3 ~~or regulations.~~

4 ~~(3) A project that is not covered by paragraph (1) or (2), but~~
5 ~~that adopts best performance standards for greenhouse gas~~
6 ~~reductions shall be deemed to have a less than significant effect~~
7 ~~on the environment relating to greenhouse gas emissions, if those~~
8 ~~best performance standards have been adopted by a public agency.~~
9 ~~For purposes of this section, “best performance standards” are~~
10 ~~feasible means that are achieved in practice for reducing or limiting~~
11 ~~greenhouse gas emissions, including, but not limited to, standards~~
12 ~~concerning equipment type and design, and operational and~~
13 ~~maintenance practices.~~

14 ~~(4) A project that is not covered by paragraph (1), (2), or (3);~~
15 ~~but that reduces project-specific greenhouse gas emissions by 30~~
16 ~~percent from business-as-usual shall be deemed to have a less than~~
17 ~~significant effect on the environment relating to greenhouse gas~~
18 ~~emissions, or to have mitigated the environmental effects of~~
19 ~~greenhouse gas emissions to a less than significant level. For~~
20 ~~purposes of this section, “business-as-usual” is the three year~~
21 ~~average emissions inventory per sector established by the State~~
22 ~~Air Resources Board for purposes of calculating emissions~~
23 ~~reduction targets pursuant to the Global Warming Solutions Act~~
24 ~~of 2006 (Division 25.5 (commencing with Section 38500) of the~~
25 ~~Health and Safety Code), as that emissions inventory may be~~
26 ~~updated from time to time by the State Air Resources Board. The~~
27 ~~negative declaration, mitigated negative declaration, environmental~~
28 ~~impact report, or other environmental document approved for a~~
29 ~~project covered by this paragraph shall comply with applicable~~
30 ~~provisions of the guidelines adopted pursuant to Section 21083.05.~~
31 ~~The project’s environmental analysis shall explain how applicable~~
32 ~~mitigation measures or emissions reduction measures, including~~
33 ~~where appropriate the application of reduction measures adopted~~
34 ~~or specified by the State Air Resources Board or other local,~~
35 ~~regional, or state agencies, provide the required reduction of~~
36 ~~emissions that would otherwise be associated with the proposed~~
37 ~~project.~~

38 ~~(b) This section is intended to specify standards for determining~~
39 ~~the significance of project environmental effects relating to~~
40 ~~greenhouse gas emissions under this division. This section does~~

1 not limit the application to proposed projects of any other
2 applicable laws, rules, or regulations relating to greenhouse gas
3 emissions or emissions reductions or the authority of a local, state,
4 or federal agency to directly regulate greenhouse gas emissions
5 under other statutory authority.
6 SEC. 3. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 a local agency or school district has the authority to levy service
9 charges, fees, or assessments sufficient to pay for the program or
10 level of service mandated by this act, within the meaning of Section
11 17556 of the Government Code.

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